

HEIRS OF PETE OLSON

IBLA 75-480

Decided March 30, 1982

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting Native allotment application AA-7469.

Vacated and remanded.

1. Alaska: Native Allotments

In sec. 905(a) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of the Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

APPEARANCES: Joel Bolger, Esq., Alaska Legal Services Corporation, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Appellants have appealed 1/ from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 19, 1975, which rejected

---

1/ In an order dated July 14, 1975, the Board dismissed the appeal for failure to file a statement of reasons in support of the appeal. A Request for

appellants' decedent's application for a parcel of approximately 100 acres filed pursuant to the Alaska Native Allotment Act, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970) (Act). 2/ The stated basis for BLM's rejection was that decedent/applicant had not presented clear and credible evidence that he had occupied the land as contemplated by the Act. Appellants have not been given an opportunity for hearing. In Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), the court held that Native allotment applicants were entitled to notice and an opportunity for hearing where there was an issue of fact with respect to an applicant's qualifications. Appellants asserted in their appeal that they were entitled to a hearing on issue of fact according to the rule in Pence.

[1] At the present time, however, we must consider the following provision of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435, enacted on December 2, 1980:

Sec. 905. (a)(1) Subject to valid existing rights, all Alaska Native allotment applications made pursuant to the Act of May 17, 1906 (34 Stat. 197, as amended) which were pending before the Department of the Interior on or before December 18, 1971, and which describe either land that was unreserved on December 13, 1968, or land within the National Petroleum Reserve--Alaska (then identified as Naval Petroleum Reserve No. 4) are hereby approved on the one hundred and eightieth day following the effective date of this Act, except where provided otherwise by paragraph (3), (4), (5), or (6) of this subsection, or where the land description of the allotment must be adjusted pursuant to subsection (b) of this section, in which cases approval pursuant to the terms of this subsection shall be effective at the time the adjustment becomes final. The Secretary shall cause allotments approved pursuant to this section to be surveyed and shall issue trust certificates therefor.

Those other paragraphs describe circumstances under which the application would remain subject to adjudication under the Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed, 43 U.S.C. § 1617 (1976). In this case, it appears that the only circumstance that would bar automatic approval would be the filing of a protest under subsection 905(a)(5), before the end of the 180-day period. 3/

---

fn. 1 (continued)

Reconsideration, filed May 9, 1977, presented "mitigating circumstances" which prompted the Board to reinstate the appeal by order dated May 17, 1977. The document designated "Request for Reconsideration," contained a statement of reasons.

2/ Appellants' decedent also applied for a smaller, 10-acre allotment which was approved.

3/ In addition to the filing of a protest, such circumstances include a determination that the land is valuable for certain minerals, or a determination that the application describes land in a previously established unit of the national park system or in a state selection but where the allotment is not within the core township of a Native village.

The record shows no reason why appellants' allotment application should not be approved under this statutory provision. There appear to be no valid existing rights in conflict with the application, and the land was not reserved on December 13, 1968. We have no basis for concluding that appellants' application was not pending before the Department on December 18, 1971. <sup>4/</sup> Where a Native allotment applicant meets the requirements of subsection 905(a)(1), failure to provide adequate evidence of use and occupancy does not bar approval of the allotment application. The State Office, therefore, should hold appellants' application for approval, subject to any action which may have arisen before the end of the 180-day period which would preclude approval under subsection 905(a)(1) and require adjudication pursuant to the provisions of the Native Allotment Act. Jack Gosuk, 54 IBLA 306 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated, and the case remanded for further action consistent with this opinion.

---

Gail M. Frazier  
Administrative Judge

We concur:

---

Anne Poindexter Lewis  
Administrative Judge

---

Douglas E. Henriques  
Administrative Judge

---

<sup>4/</sup> The requirement that an application be pending before the Department on Dec. 18, 1971, must be met regardless of whether the application is approved under section 905(a)(1) of the Alaska National Interest Lands Conservation Act or the Alaska Native Allotment Act, because the Native Allotment Act was repealed on that date and no application could be approved thereunder unless it was pending before the Department of the Interior on Dec. 18, 1971. 43 U.S.C. § 1617(a) (1976). Although Olson's application was dated Nov. 4, 1971, it was not filed with the Bureau of Land Management until Apr. 3, 1972, when the Bureau of Indian Affairs (BIA) filed it on his behalf. It appears that many Native allotment applicants had filed their applications or evidence with the BIA prior to Dec. 18, 1971, but BIA held them past the time when they were required to be filed with the Bureau of Land Management. Such applications are deemed to be pending on Dec. 18, 1971. See, e.g., Julius F. Pleasant, 5 IBLA 171 (1972). On remand appellants should be required to establish that Olson's application was filed with BIA prior to Dec. 18, 1971.

